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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

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No. ~~N~~, Original.

EX PARTE: IN THE MATTER OF THE REPUBLIC OF COLOMBIA, PETITIONER.

ANSWER OF NATHAN GOFF, JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF WEST VIRGINIA.

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ANSWER OF NATHAN GOFF, JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF WEST VIRGINIA.

The answer of Nathan Goff, circuit judge for the circuit court of the United States for the northern district of West Virginia, to the rule to show cause why a writ of mandamus should not be granted as prayed in the petition of the Republic of Colombia heretofore filed in the above-entitled cause.

The respondent respectfully answers and certifies to the honorable the Supreme Court of the United States:

First. That he has no personal knowledge of the allegations contained in paragraph 1 of said petition, but believes the same to be true.

Second. That he admits the allegations contained in paragraphs 2, 3, 4, and 5 of said petition, excepting as hereinafter stated; that he supposes that petitioner has correctly set out the matters appearing of record in the appeal to the honorable the Supreme Court of the United States so far as in said paragraphs and in the remainder of said petition petitioner undertakes to relate them, but for greater certainty respondent refers to the record itself, when produced, for accurate information as to the matters and things therein recorded.

Third. That he admits the allegations contained in paragraph 6 of said petition to be substantially true, but denies that the decree of May 18, 1903, operated to reverse the decree of said circuit court of appeals *in toto*. Respondent avers that the said decree of May 18, 1903, reversed said decree of the circuit court of appeals only in so far as it reduced the last-mentioned decree by the amount of the items stated in the opinion of the Supreme Court to be invalid, viz., by the amount of $164,200, and that as to the remainder of said decree of said circuit court of appeals the same was affirmed.

Fourth. That he admits the allegations contained in paragraph 7 of said petition.

Fifth. That he denies that the decree of respondent is erroneous or void for the reasons stated in paragraph 8 of said petition.

Sixth. That as to the allegations contained in paragraph 9 of said petition respondent does not deem himself called upon to answer.

Seventh. That for further answer to said petition respondent says that the submission referred to in said petition was a compromise and settlement of all existing controversies between petitioner and said Cauca Company; that by said submission the said company surrendered to relator a concession it owned for the construction, maintenance, and operation of a certain railway in the Republic of Colombia, together with the railway itself, and all its fixed plant, rolling stock, buildings, tools, utensils, and appurtenances; that in consideration therefor relator agreed to pay said Cauca Company the cost of the construction thereof; that by this submission it was submitted to three commissioners to determine such cost; that at the execution of said submission relator paid said company $200,000 on account of said cost, and submitted to said commission the determination of the additional cost of construction of said railway, if any, and conferred the power to fix the time, manner, and terms of payment thereof (Record, pp. 59 *et seq.*).

Eighth. That on October 22, 1897, two of said commissioners (the commissioner of relator having withdrawn from said commission and having refused to sign the award thereof) made an award to said Cauca Company of a gross sum, and also determined that such award should be paid by relator in gold coin of the United States of America, in the city of New York, on January 26, 1898.

Ninth. That the bill of complaint filed, as alleged in said petition, to cancel and vacate said award expressly averred that the totality of said award was made up of distinct and separable items, and that the record of proceedings of said

commission (which was expressly made a part of said bill) specifically set forth in detail the items of said award, together with the grounds of allowance thereof (Record, pp. 14 to 16).

Tenth. That in and by said bill of complaint, and in all subsequent proceedings up to the filing of this petition, relator repudiated said award *in toto*, and repudiated each and every of the several separable items of said award, and disclaimed any obligation thereunder; that while relator admitted a liability of $33,909.14, it expressly disclaimed any liability therefor under said award, and never made in court any proper tender thereof, and never proved any such tender to have been made.

Eleventh. That in the decree of respondent of March 11, 1901, the items of said award disallowed consisted of items of interest awarded by said commission upon moneys expended by said Cauca Company in said railway enterprise from the date of expenditure down to the date of the surrender of the railway, viz., January 26, 1897; that respondent's reason for disallowing same was because the company was in possession of and had received the income from said railway up to January 26, 1897; that all of the items of the award as originally confirmed were for moneys paid out by said company in and about said railway, without any interest thereon; that in providing in said decree for the confirmation of said award and the time of payment thereof respondent simply followed and adopted the provisions contained therein as determined by said commission,

excepting that he added thereto the words "with interest thereon from said date."

Twelfth. That all of the items of said award as finally confirmed by the Supreme Court of the United States were easily distinguishable and separable from the invalid items, and that for this reason respondent deemed it to be the duty of relator to tender or pay to said Cauca Company the amount of said distinct and separable items of said award upon the date when said award was expressly made due and payable. More than seven years have elapsed since January 26, 1897, when the Cauca Company, acting in good faith, surrendered all of its property, rights, and franchises to the relator, and more than six years have elapsed since the time of payment fixed by the commission, during which time relator has had the use and possession, not only of the railroad and property surrendered, but also of $193,204.02 of the purchase price, for no portion of which any actual or legal tender has ever been made.

Thirteenth. Respondent entered the decree complained of strictly in conformity with the opinion and mandate of this honorable court, being informed and believing that in entering its final decree the circuit court for the northern district of West Virginia was to take into consideration its original decree and the opinion and mandate of this honorable court, and that so much of its former decree as was not specifically reversed or disapproved still stood in full force, and that the original decree of the circuit court was not reversed *in toto*, but was only altered, modified, reversed in part and affirmed in part so far as it was requisite for it to

be made to conform and be in harmony with the opinion and mandate of this honorable court, and that the circuit court could do nothing to affect the decree except in obedience to the mandate of this honorable court; and this the respondent is informed and believes to be in accordance with the opinions of this honorable court as contained in its decisions upon similar cases.

Fourteenth. That it was proper, under the prayers of the cross-bill and the opinion and mandate of this honorable court, to enter up such a decree as was entered; and your respondent further avers that there is nothing in the opinion or mandate of this honorable court disapproving of the form of the original decree or modified decree as entered in this court, this honorable court merely saying of the original decree, "The decree confirms the award after rejecting certain items. Of course it does not attempt to order specific performance;" which expression impliedly approves the form of the decree as entered. Moreover, this honorable court, in referring to the powers of the commission, also said: "But when its powers are established we are not called upon to revise any finding that could have been made without going beyond the line which we lay down." That the provision of said decree of July 16, 1903, objected to by relator is in effect simply a confirmation of a similar provision of the award, viz., as to time, manner, and terms of payment; which provision said commission had full and express power under the submission to make (Record, p. 62, Art. X); that this honorable court also said in its opinion in referring to the items of the award, "If they are open to consideration they

show that the award was made up of several items, some of which may be disallowed without affecting the rest." That in entering said decree of July 16, 1903, respondent deemed this to mean that the valid items of said award were not affected in any manner, but were payable at the time, in the manner, and upon the terms originally provided in said award.

Fifteenth. Respondent further shows that the award was payable on a certain date, and he is advised and believes that awards for the payment of money on a day certain draw interest from the day so fixed. Your respondent, further answering, says that the fact that the whole award, both valid and invalid, was made payable can have no effect upon this matter of interest, because said award was composed of several distinct and separable items, the valid portion being easily separable from the invalid portion, which valid portion should have been paid as directed in said award; and your respondent is further advised and believes that where interest is awarded by a lower court in its decree, and said decree is modified by a higher court by striking out certain items of said decree without mentioning the matter of interest or disallowing the same, that interest is properly allowable upon the items remaining, and that the circuit court merely acted in accordance with the opinions of this honorable court as hitherto rendered in similar cases.

Sixteenth. That respondent's reason for providing in said decree of July 16, 1903, for payment of interest at the rate of 6 per cent. per annum is that under the express power granted in the submission the commission had pro-

vided that said award should be payable in the city of New York, and the legal rate of interest in the State of New York was at the date provided for payment thereof and has since continued and now is 6 per cent.

Seventeenth. Respondent is advised that it is not necessary that he should make any further or other answer to the rule aforesaid than this herein contained, nor answer more specifically any of the allegations set forth in the petition for mandamus aforesaid. And, having fully answered said rule, he prays to be hence dismissed with all proper costs.

And these are the causes and reasons which this respondent has offered why a writ of mandamus should not issue commanding him to alter or amend said final decree of the circuit court for the northern district of West Virginia, but respondent respectfully submits to the judgment of this honorable court and will enter and enforce by proper decree any order or decree made by this honorable court in and about the matters complained of.

Respondent respectfully refers to the following cases:

Gaines *v.* Rugg, 148 U. S., 228;
Gaines *v.* Latta, *id.*;
Latta *v.* Granger, 167 U. S., 81;
Kneeland *v.* American Loan & Trust Co., 138 U. S., 509;
Metcalf *v.* City of Watertown, 68 Fed., 863–864;
The Grapeshot, 2 Woods (U. S. cir. ct.), 42;
Appeal of Wilson (Pa.), 11 Atl., 678;

and to brief of counsel for the Cauca Company, to be filed in this honorable court, and the authorities referred to in sup-

port and maintenance of the positions assumed by this answer.

NATHAN GOFF,
Judge of the Circuit Court of the United States
for the Northern District of West Virginia.

[Endorsed:] In the Supreme Court of the United States. October term, 1903. No. 18, original. *Ex parte* The Republic of Colombia, petitioner. Answer of Nathan Goff, judge of the circuit court of the United States for the northern district of West Virginia.